[Planning, Building Codes - Compliance Oversight and Violations for Misrepresentation of Tenant Information]

Ordinance amending the Planning and Building Codes to change the name of the Department of Building Inspection's Expanded Compliance Control program to the Compliance Oversight program, integrate Planning Code violations into the Compliance Oversight program by tracking significant Planning Code violations in the Compliance Oversight Tracking File, designating specific Planning Code violations as candidates for Compliance Oversight, authorizing the Zoning Administrator to determine and designate parties responsible for specified significant violations as candidates for Compliance Oversight, and extending the Compliance Oversight Tracking File review period from 18 to 48 months; amending the Planning Code to set the minimum penalty for violations involving misrepresentation of specified tenant information to $30,000; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Environmental, Land Use, and Other Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 261105 and is incorporated herein by reference. The Board affirms this determination.

(b) On _____, the Planning Commission, in Resolution No. _____, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by reference.

(c) Pursuant to Planning Code Section 302, the Board finds that this Planning Code amendment will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. _____, and the Board incorporates such reasons herein by reference. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

(d) On _____, the Building Inspection Commission considered this ordinance at a duly noticed public hearing pursuant to Charter Section 4.121 and Building Code Section 104A.2.11.2. A copy of a letter from the Secretary of the Building Inspection Commission regarding the Commission's recommendation is on file with the Clerk of the Board of Supervisors in File No. _____.

Section 2. Findings. No local findings are required under California Health and Safety Code Section 17958.7 because the amendments to the Building Code contained in this ordinance do not regulate materials or manner of construction or repair, and instead relate in their entirety to administrative procedures for implementing the code, which are expressly

excluded from the definition of a “building standard” by California Health and Safety Code Section 18909(c).

Section 3. Article 1.7 of the Planning Code is hereby amended by revising Section 176, to read as follows:

SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.

* * * *

(b) **Methods of Enforcement.** The Zoning Administrator shall have authority to investigate violations of this Code, including but not limited to the power to issue and serve administrative subpoenas as necessary to determine whether violations of this Code have occurred. Recipients of administrative subpoenas shall have a reasonable opportunity to challenge the administrative subpoena by seeking judicial review before suffering any penalties for refusing to comply. Where the recipient of an administrative subpoena does not allow the Zoning Administrator access to the records requested and does not seek prompt judicial review, the Zoning Administrator may presume that the violation occurred, absent clear and convincing evidence otherwise. The Zoning Administrator shall have authority to enforce this Code against violations thereof by any of the following actions:

* * * *

(4) Calling upon the Chief of Police and authorized agents to assist in the enforcement of this Code; ~~*and*~~

(5) Calling upon the Mayor’s Office of Housing and Community Development (MOHCD) to enforce Planning Code requirements relating to affordable housing. The Department and MOHCD shall enter into a memorandum of understanding to identify the types of enforcement cases to be delegated to MOHCD~~.~~*; and*

(6) Calling upon the Department of Building Inspection to include any significant violation of this Code in the Compliance Oversight Tracking File maintained by the Inspection Services Division pursuant to Building Code Section 103A.6.1(c), and/or designate the party responsible for an egregious violation, including but not limited to the violations described in subsection 176(c)(1)(C), as a candidate for Compliance Oversight pursuant to Building Code Section 103A.6.2(2).

(c) **Penalties.**

(1) **Administrative Penalties.**

* * * *

(C) **Penalties for Specified Violations.** *The Zoning Administrator shall designate the party responsible for any of the violations described in subsections (i), (ii), and (iii) below as a candidate for Compliance Oversight pursuant to Building Code Section 103A.6.2(2).*

* * * *

(D) **Hearings.**

* * * *

(v) **Appeal of Zoning Administrator Determination to the Board of Appeals.** In hearing any appeal of the Zoning Administrator's determination, the Board of Appeals shall consider the above factors. If the Board upholds the Zoning Administrator's decision in whole or in part but reduces the amount of the daily penalty applicable under subsection (c)(1)(A), it may not reduce the amount of the penalty below $200 for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator on a request for hearing or before the Board of Appeals on appeal. If the Board of Appeals upholds the Zoning Administrator's decision in whole or in part with respect to the penalty applicable under subsection (c)(1)(C), but reduces the amount of such penalty, it may not reduce the amount of the penalty below*:* $50,000 for each residential unit added or removed without authorization*;* ~~*or*~~ $100,000 for each historic landmark, or

contributor to one or more historic districts or conservation districts that are identified in the Appendices to Articles 10 and Article 11 of the Planning Code, or property listed in the California Register of Historical Resources or the National Register of Historic Places, that is significantly damaged or altered, or demolished*; or $30,000 for each misrepresentation of material information regarding the presence of tenants or tenant history within a Development Application or Building Permit Application*.

The provision of administrative penalties is intended to secure compliance with and deter violations of the Planning Code and to compensate the City for its costs of enforcement.

Section 4. Chapter 1A of the Building Code is hereby amended by revising Sections 103A.6, 103A.6.1, 103A.6.2, 103A.6.3, and 103A.6.4, to read as follows:

103A.6 *Expanded* Compliance *Oversight List*Control and permit review.

103A.6.1 Significant violation tracking reports. When any of the following occur:

(a) a building inspector issues a Notice of Violation in which there is an instance of any of the following:

(1) Misrepresentation of existing conditions or project scope that results in circumvention of notification or review requirements;

(2) Structural work or demolition of structural features without or beyond the scope of a building permit;

(3) Work under permit performed by a party without required license; or

(4) Other substantial non-compliance;

(b) any individual, agent, or entity with business before the Department is convicted of any offense involving fraud, willful misrepresentation, or the making of any willfully inaccurate or false statement associated with a permit application or project considered by the

City, or any offense involving bribery or other unlawful influence of a City official or employee; or

(c) the Planning Department notifies the *Inspection Services Division*~~*Department that the Planning Department has identified*~~ *of* a significant *violation of the Planning Code pursuant to Planning Code Section 176(b)(6);*~~*misrepresentation of existing conditions or project scope that has resulted in a failure to disclose or represent any Unauthorized Unit in any permit application submitted to the Department;*~~

Inspection Services Division shall log the violation described in subsections (a), (b), or (c) above, and identify all individuals, agents, and entities associated with the permit and/or project in the Permit Tracking System (or other system of record) or known to be associated with the permit and/or project at the time the Notice of Violation is issued, or the violation described in subsections (b) or (c) is discovered, in the Compliance ~~*Control*~~*Oversight* Tracking File maintained by the Inspection Services Division. The Compliance ~~*Control*~~*Oversight* Tracking File is for internal purposes only; an individual, agent, or entity's presence in the file does not indicate responsibility for any violation or misconduct. ~~*For purposes of Section 103A.6, "Unauthorized Unit" shall have the same meaning as in Planning Code Section 317(b).*~~

103A.6.2 Candidates for ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight*.

(1) The Inspection Services Division *and the Planning Department Code Enforcement Team* shall review the Compliance ~~*Control*~~*Oversight* Tracking File on a monthly basis to determine if any project, individual, agent, or entity has been associated with three or more reported violations described in 103A.6.1 within the last ~~*18*~~*48* months. Any such project, individual, agent, or entity shall be a candidate for ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight*.

(2) Even if the three-or-more-violations standard is not met during the ~~*18*~~*48*-month period, the Department *and/or the Zoning Administrator pursuant to Planning Code Sections 176(b)(6) or 176(c)(1)(C)*, in consultation with the City Attorney, may designate a project,

individual, agent, or entity as a candidate for ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* for any *conduct*, violation, or violations that *either* ~~*the*~~ Department determines, individually or together, to be egregious and/*or* create significant risk to health, safety, or property.

103A.6.3 ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* List.

103A.6.3.1 Factors. In determining whether to include any candidate on the ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* List, the following factors shall be considered: the candidate's role and conduct that contributed to the violations; any impacts on individual or public health, and safety; whether the misrepresentation of existing conditions or the misrepresentation of project scope was reckless or intentional to avoid permit review or notification requirements, including any omission or misrepresentation regarding the presence of any Unauthorized Unit; the extent of the demolition or work that occurred without or beyond the scope of a building permit or without the necessary license or certification; any impacts on historically significant structures; prospective undervaluation of the construction cost that resulted in lower permit fees from the violations; and the number, frequency, and severity of violations.

103A.6.3.2 Process. For each project, individual, agent, or entity designated as a candidate for ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight*, the following actions shall be taken:

(1) Inspection Services staff, designated by the Director of the Department of Building Inspection, shall notify the candidate and request any exculpatory information as to why ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* is not warranted and shall draft a summary report detailing the violation(s) and exculpatory evidence or arguments, if any, relevant to whether the candidate warrants ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight*.

(2) The summary report shall conclude with a determination:

(a) that the candidate should be placed on the ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* List, and provide written findings, including but not limited to findings in response to the factors described in 103A.6.3.1, supporting that determination; or

(b) that the candidate should not be placed on the ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* List, and provide written findings, including but not limited to findings in response to the factors described in 103A.6.3.1, for why the candidate does not warrant ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight*.

(3) The Director of the Department of Building Inspection shall review all ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* determinations made by designated staff*, consult with the Director of the Planning Department where appropriate*, and shall make a final determination either affirming or overruling the determination. The Director shall either adopt the staff findings or issue the Director's own written findings detailing the basis for the final determination. The Department shall notify the candidate in writing of the Director's final determination and shall post the final determination on the Department's website in a manner that complies with section 104A.6.

(4) Any person may appeal the Director's final determination to the Building Inspection Commission pursuant to the provisions of Chapter 77 of the Administrative Code.

(5) The Director shall maintain the ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* List on the Department's website and shall provide the list to the Building Inspection Commission on a quarterly basis commencing when the first project, individual, agent, or entity is placed on the list.

103A.6.4 ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* Provisions.

103A.6.4.1 Duration. Any project, individual, agent, or entity placed on the ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* List ("listee") shall remain on the list for five years. Any subsequent significant violation(s), as defined in subsection 103A.6.1, by a listee shall extend the period of ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* for that listee by five years from the date of the subsequent violation(s).

103A.6.4.2 Measures. Upon placing a project, individual, agent, or entity on the ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* List, the Department shall take the following actions:

(1) Refer the listee to any applicable licensing board or regulatory agency with the Director's final determination and written findings;

(2) Require all existing permit applications and addenda and any new applications or addenda submitted by or containing reference to the listee undergo ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* by senior Plan Review Services staff and multi-station (all permit stations applicable to a given permit) review at intake and after the Planning Department approves the Site Permit (if applicable); and notify all parties listed on the applications or addenda for these permits of the ~~*Expanded*~~ Compliance ~~*Control*~~*Oversight* requirement;

(3) Require site inspections by the Department of Building Inspection and Planning Department prior to issuing any permit submitted by or containing reference to the listee;

(4) Require that a licensed contractor be named on the permit prior to issuance, unless the applicant is filing for the permit as an Owner-Builder, in conformance with California Health and Safety Code Section 19825;

(5) ~~*Dedicate*~~*Ensure* a Senior Inspector ~~*to*~~ perform*s* *the final* inspection~~*s*~~ ~~*in coordination with Planning Department staff for listees with a history of Planning Code violation*~~ and respond*s* to any complaints or requests regarding the listee;

(6) If warranted, consult with the City Attorney about any additional enforcement actions; and

(7) If warranted, after consultation with the City Attorney, refer the listee to the District Attorney with the Director's final determination and written findings.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 6. Effective Date. This ordinance shall become effective on the 31st day after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Robb Kapla
ROBB KAPLA
Deputy City Attorney

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